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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

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11 JAMES A. FRY d/b/a FOX NETWORK
12 SYSTEMS,

13 Plaintiff,

14 v.

15 AZTEC DOBERMAN PINSCHER CLUB
16 OF SAN DIEGO,

17 Defendant.

18 AZTEC DOBERMAN PINSCHER CLUB
19 OF SAN DIEGO

20 Counter-Claimant

21 v.

22 JAMES A. FRY an individual and d/b/a
DOBERMANRESQ.COM; and
DOBERMANRESQ INC., a California
corporation,

23 Counter-Defendants.

Case No. 11-CV-1329 BTM (POR)

**JAMES A. FRY, DOBERMANRESQ.COM
AND DOBERMANRESQ INC.'S FIRST
AMENDED ANSWER TO AZTEC
DOBERMAN PINSCHER CLUB OF SAN
DIEGO'S THIRD PARTY COMPLAINT FOR
INJUNCTIVE RELIEF AND DAMAGES**

Judge: Hon. Barry Ted Moskowitz

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VIII.

Answering Paragraph 12, DEFENDANTS deny the allegations of this paragraphs in its entirety, and in each and every part thereof.

IV.

Answering Paragraph 13, DEFENDANTS deny the allegations of this paragraphs in its entirety, and in each and every part thereof.

X.

Answering Paragraph 14, DEFENDANTS deny the allegations of this paragraphs in its entirety, and in each and every part thereof.

XI.

Answering Paragraph 15, DEFENDANTS deny the allegations of this paragraphs in its entirety, and in each and every part thereof.

XII.

Answering Paragraph 16, DEFENDANTS are without information sufficient to form a belief as to the truth or falsity of the allegations of this paragraph and, therefore, deny generally and specifically the allegations of this paragraph and every part thereof.

XIII.

Answering Paragraph 17, DEFENDANTS are without information sufficient to form a belief as to the truth or falsity of the allegations of this paragraph and, therefore, deny generally and specifically the allegations of this paragraph and every part thereof.

XIV.

Answering Paragraph 18, DEFENDANTS deny the allegations of this paragraphs in its entirety, and in each and every part thereof.

XV.

Answering Paragraph 19, DEFENDANTS are without information sufficient to form a belief as to the truth or falsity of the allegations of this paragraph and, therefore, deny generally and specifically the allegations of this paragraph and every part thereof.

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XVI.

Answering Paragraph 20, DEFENDANTS deny the allegations of this paragraph in its entirety, and in each and every part thereof.

XVII.

Answering Paragraph 21, DEFENDANTS deny the allegations of this paragraph in its entirety, and in each and every part thereof.

XVIII.

Answering Paragraph 22, DEFENDANTS deny the allegations of this paragraph in its entirety, and in each and every part thereof.

XIX.

Answering Paragraph 23, DEFENDANTS are without information sufficient to form a belief as to the truth or falsity of the allegations of this paragraph and, therefore, deny generally and specifically the allegations of this paragraph and every part thereof.

XX.

Answering Paragraph 24, DEFENDANTS deny the allegations of this paragraph in its entirety, and in each and every part thereof.

XXI.

Answering Paragraph 25, DEFENDANTS deny the allegations of this paragraph in its entirety, and in each and every part thereof.

XXII.

Answering Paragraph 26, DEFENDANTS are without information sufficient to form a belief as to the truth or falsity of the allegations of this paragraph and, therefore, deny generally and specifically the allegations of this paragraph and every part thereof.

XXIII.

Answering Paragraph 27, DEFENDANTS deny the allegations of this paragraph in its entirety, and in each and every part thereof.

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1 XXIV.

2 Answering Paragraph 28, DEFENDANTS deny the allegations of this paragraph in its entirety,
3 and in each and every part thereof.

4 XXV.

5 Answering Paragraph 29, DEFENDANTS deny the allegations of this paragraph in its entirety,
6 and in each and every part thereof.

7 XXVI.

8 Answering Paragraph 30, DEFENDANTS deny the allegations of this paragraph in its entirety,
9 and in each and every part thereof.

10 XXVII.

11 Answering Paragraph 31, DEFENDANTS deny the allegations of this paragraph in its entirety,
12 and in each and every part thereof.

13 **AFFIRMATIVE DEFENSES TO EACH AND EVERY**

14 **CLAIM IN THE THIRD PARTY COMPLAINT**

15 **I.**

16 The Complaint fails to state sufficient facts to constitute a cause of action upon which relief can
17 be granted.

18 **II.**

19 The Counter Claim fails to set forth a case or controversy as required by Federal law.

20 **III.**

21 PLAINTIFF lacks standing to assert the claims herein as required by Federal law.

22 **IV.**

23 PLAINTIFF fails to allege with specificity any acts or omissions by DEFENDANTS which
24 proximately caused or which would cause damages, if any, to PLAINTIFF and injuries and damages,
25 if any, allegedly sustained by PLAINTIFF are speculative, indefinite and uncertain.

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V.

DEFENDANTS are informed and believe and thereon allege that PLAINTIFF has acted in bad faith, that PLAINTIFF has no rights to the material which is the subject of this litigation; PLAINTIFF'S sole purpose in seeking these materials and in bringing this action was not to remedy harm done or threatened to itself or to others similarly situated.

VI.

DEFENDANTS are informed and believe and thereon allege that PLAINTIFF is not a proper party-in-interest.

VII.

DEFENDANTS' actions, if any, were based on their exercise of a constitutionally protected right. As a result, PLAINTIFF is not entitled to the relief requested.

VIII.

PLAINTIFF'S conduct bars it from any recovery herein by virtue of the equitable doctrine of estoppel.

IX.

PLAINTIFF'S conduct bars it from any recovery herein by virtue of the equitable doctrine of waiver.

X.

Any prospective recovery herein is barred by the equitable doctrine of laches.

XI.

Any prospective recovery herein is barred by the equitable doctrine of "unclean hands."

XII.

This action is time-barred by virtue of the applicable statute of limitations, including, but not limited to, the provisions of the California Code of Civil Procedure.

XIII.

PLAINTIFF has failed to mitigate its damages, if any, thus barring any recovery herein.

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XIV.

PLAINTIFF by its actions and omissions has, expressly or implicitly approved, ratified and/or consented to the alleged acts and omissions of DEFENDANTS and thus is not entitled to any relief from DEFENDANTS.

XV.

DEFENDANTS' actions were privileged and/or as of right and, thus, PLAINTIFF is barred from asserting its claims against DEFENDANTS.

XVI.

PLAINTIFF by its actions and omissions has, expressly or implicitly, approved, ratified and/or consented to the alleged acts and omissions of DEFENDANTS, and thus, is not entitled to any relief from DEFENDANTS.

XVII.

PLAINTIFF'S injury, damage or loss, if any, was directly and proximately caused or contributed by PLAINTIFF'S intentional and/or negligent actions. PLAINTIFF'S claims should be barred or diminished by the proportion that its own conduct proximately caused injury, damage or loss, if any.

XVIII.

The damages suffered by PLAINTIFF, if any, was caused in part or in whole by PLAINTIFF and unknown parties, and therefore, DEFENDANTS' liability, if any, should be apportioned based on liability, if any, of PLAINTIFF and unknown parties.

XIX.

The Complaint, and each cause of action therein, is uncertain.

XX.

DEFENDANTS' alleged use of PLAINTIFF'S materials is not in violation of Federal Copyright Law due to PLAINTIFF not having any valid copyright claim and that DEFENDANTS are the rightful owners of the images.

XXI.

PLAINTIFF'S copyright claim is not proper as the copyright action is based on images of which DEFENDANTS are the rightful owner of.

XXII.

PLAINTIFF'S copyright claim is not proper as the images upon which their copyright claim is based on lack originality pursuant to 17 U.S.C. section 102.

XXIII.

PLAINTIFF'S copyright claim is barred by the Fair Use Doctrine pursuant to 17 U.S.C. section 107.

XXIV.

PLAINTIFF'S copyright claim is not proper as the images at issue are not copyrightable images.

XXV.

PLAINTIFF'S copyright claim is not proper as PLAINTIFF abandoned and waived their copyright.

XXVI.

PLAINTIFF'S copyright claim is not proper as DEFENDANTS had no notice of PLAINTIFF'S copyright under 17 U.S.C. section 401.

XXVII.

PLAINTIFF'S copyright claim is not proper as PLAINTIFF and DEFENDANTS made use of a common source.

XXVIII.

PLAINTIFF'S copyright claim is barred by the Independent Creation Doctrine.

XIX.

DEFENDANTS allege that they presently have insufficient knowledge or belief as to whether they may have additional affirmative defenses available. DEFENDANTS reserve the right to assert any additional defenses in the event that discovery indicates that it would be appropriate.

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1. That the action be dismissed with prejudice;
2. That PLAINTIFF take nothing by its actions;
3. That DEFENDANTS recover their costs of suit incurred herein; and
4. For such other and further relief as the Court deems just and proper.

/s/ Patrick J. Kane

By:

Patrick J. Kane, Attorneys for Plaintiff, and
Counter-Defendant JAMES A. FRY, an
individual, d/b/a FOX NETWORK SYSTEMS,
DOBERMANRESQ.COM and
DOBERMANRESQ INC.